SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN, ETC., ET AL., PETITIONERS,

vs.

CHICAGO RIVER AND INDIANA RAILROAD COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 3, 1956

—2705-2

[fols. 1-4] [Caption omitted]

[fol. 5] **IN THE DISTRICT COURT OF THE UNITED STATES**

* * * * * * * *

NOTICE, ORDER TO SHOW CAUSE, AND TEMPORARY RESTRAINING ORDER—Filed July 16, 1954

It appearing to the court from the verified complaint and from testimony, adduced in open court that a restraining order preliminary to a hearing upon a motion for an injunction, to issue, without notice, because defendants and the yard foremen, yardmen and switchmen are about to go out on strike and that they will do so unless restrained by order of this court, and that immediate and irreparable injury, loss and damage will result to plaintiff, to five hundred industries served by plaintiff, to twenty-nine railroads served by plaintiff, and to the public, before notice can be served and a hearing had on plaintiff's motion for an injunction:

That if the defendants, and the members of the Brotherhood of Railroad Trainmen whom they represent, are permitted to strike, all train operations on and over plaintiff's railroad system will be paralyzed; that plaintiff will be forthwith forced to embargo shipments and curtail or eliminate its services in transporting great quantities of United States mail, goods and properties of industry, including perishable foodstuffs which are continuously and necessarily carried on said railroad, which will deprive plaintiff, the industries affected, other interested railroads, and the public, of large amounts of revenue and of the goods and foodstuffs which are daily carried by plaintiff and its connecting lines; that such damages cannot be wholly estimated, calculated or compensated for in money, and that said damages will be immediate, substantial and irreparable.

Now, Therefore, It is Ordered that defendants, members of defendants' organization and its officers, their agents, servants, employees and attorneys, and all persons including all yardmen, yard foremen and switchmen employed by plaintiff on its railroad, and any persons in active concert and participation with them, and all persons act-

[fol. 6] ing by, with, through and under them, or by or through their order, be and they are hereby restrained until the 19th day of July, 1954, at ten o'clock, A. M., daylight saving time, unless this order be dissolved prior thereto, or extended from:

1. Calling, ordering, authorizing, encouraging, inducing, approving, continuing, starting or permitting any strike or work stoppage on plaintiff's railroad.

2. Picketing or bannering any of the premises on which plaintiff conducts its railroad operations.

3. Interfering with ingress to or egress from said premises.

4. Interfering in any manner with the delivery, loading, unloading, dispatch or movement of any of plaintiff's rolling stock, engines, cars, equipment or trains or any of the contents thereof.

5. In any manner interfering with or inducing or endeavoring to induce any person employed by the plaintiff from performing his work and duties and from in any manner endeavoring to induce any such employee to desist therefrom.

It Is Further Ordered that said defendants, and each of them, take all steps within their power to prevent said threatened strike or work stoppage and its continuance if commenced;

It Is Further Ordered that defendants, and each of them, appear before this court in the United States Court House in the City of Chicago, Illinois, on July 19, 1954, at ten o'clock, and show cause, if any they have, as to why this restraining order should not be continued or made permanent in accordance with the prayers of the complaint heretofore filed;

It Is Further Ordered that a copy of this notice and order, and a copy of the complaint, be served by the U. S. Marshal on the defendants forthwith;

And It Is Further Ordered that copies of the said complaint and of this notice and order be posted as promptly as may be on the bulletin board at each office on plaintiff's railroad system.

Dated July 16, 1954.

J. S. Perry, United States District Judge.

I hereby certify that the foregoing is a true copy of an order entered in this case and on my file in this case.

——— ———, Clerk of said Court.

[fol. 7] IN THE DISTRICT COURT OF THE UNITED STATES

* * * * * * *

AMENDED COMPLAINT—Filed August 2, 1954

Now come the plaintiffs, The Chicago River and Indiana Railroad Company and the other carriers by railroad named in Exhibit 1 herein, and for a Complaint against defendants say:

1. The defendant Brotherhood of Railroad Trainmen is a voluntary organization and is a labor organization within the meaning of the Railway Labor Act, which is, and at all times material hereto has been the recognized and acting collective bargaining agent for all of plaintiffs' employees who are classified as yard foremen and yard helpers (including switch tenders). The Brotherhood of Railroad Trainmen consists of a Grand Lodge and many subordinate Local Lodges, and has its principal business office in Cleveland, Ohio. The Brotherhood of Railroad Trainmen is sued here in its common name. Suit is also brought against the class of its members. The members of the Brotherhood of Railroad Trainmen constitute a class so numerous as to make it impracticable to bring them all before the Court.

2. The defendant Brotherhood of Railroad Trainmen, Lodge #964, is a local lodge of the Brotherhood of Railroad Trainmen with headquarters at Chicago, Illinois.

3. The defendant Felix E. Kazmer is General Chairman of Lodge #964, and is sued in his representative capacity for said Lodge and its members.

4. The defendant Michael V Smalley is Secretary of Lodge #964, and is sued in his representative capacity for said Lodge and its members.

5. The defendant George C. Hofer is Committeeman of Lodge #964, and is sued in his representative capacity for said Lodge and its members.

6. The defendant W. M. Dolan is Vice President of the Brotherhood of Railroad Trainmen and has his principal [fol. 8] office at Chicago, Illinois, and he is sued in his representative capacity for said Association and its members. He fairly and adequately represents the class of the members of the Brotherhood of Railroad Trainmen.

7. Plaintiffs are corporations. Their names and places of incorporation are stated in Exhibit 1 herein. They are common carriers by railroad, and each is a "carrier" within the meaning of that term as defined in the Railway Labor Act, 45 U. S. C., Section 151. Plaintiff The Chicago River and Indiana Railroad Company operates a line of railroad serving the Union Stock Yards, Chicago, Illinois, and serves the lines of railroad of the other plaintiffs who are engaged in transportation of property in interstate commerce. Their operations would be adversely affected by any stoppage in the operations of The Chicago River and Indiana Railroad.

8. This Court has jurisdiction of this suit because this is an action arising under the Constitution and laws of the United States regulating interstate commerce, and the Fifth Amendment of the Constitution of the United States. The amount in controversy exceeds the sum of Three Thousand Dollars ($3,000), exclusive of interest and costs. The jurisdiction of this Court is specifically invoked under the provisions of 28 U. S. C. 1331 and 1337; 45 U. S. C. 151 et seq. (the Railway Labor Act); and 49 U. S. C. 1 et seq. (the Interstate Commerce Act).

9. In the conduct of its business The Chicago River and Indiana Railroad Company employs a class of employees, among others, generally referred to as yard foremen and yard helpers (including switch tenders) whose duties, generally stated, are the handling and controlling of the movement of railroad cars and trains over the rails of The Chicago River and Indiana Railroad Company. The Chicago River and Indiana Railroad Company cannot operate its railroad without the performance of these duties. These employees are all members of or represented by the Brotherhood of Railroad Trainmen and Lodge #964, and The Chicago River and Indiana Railroad Company has recognized the Brotherhood of Railroad Train-

men as the collective bargaining agent for these said employees.

10. Plaintiffs, defendants and plaintiffs' employees represented by defendants are subject to the Railway Labor Act, the general purposes of which are, among [fol. 9] other things, to avoid any interruption to commerce or to the operation of any carrier engaged therein, and to provide for the prompt and ordinary settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions.

Congress has established compulsory administrative machinery under the Railway Labor Act whereby parties to a collective bargaining agreement are required to submit such controversies as are here involved to the National Railroad Adjustment Board or to a proper court or board without resorting to self-help.

11. For many years prior to the claims and grievances hereinafter referred to and continuing up to the present time, rules and working conditions pertaining to the classes of employees known as yard foremen and yard helpers (including switch tenders) were determined by contracts between The Chicago River and Indiana Railroad Company and the Brotherhood of Railroad Trainmen entered into from time to time.

12. The Chicago River and Indiana Railroad Company and the defendants have at all material times in question, and for many years prior thereto, handled claims and grievances concerning individual employees of the classes mentioned in accordance with the various agreements and in accordance with the provisions of the Railway Labor Act. Among the claims and grievances presented to The Chicago River and Indiana Railroad Company for disposition were nineteen claims for additional compensation, one claim for reinstatement of a discharged employee, and one claim for reinstatement of an employee to the position of yard foreman. These grievances, disputes and claims were handled on the property of The Chicago River and Indiana Railroad Company in accordance with the various agreements between it and defendants, and in accordance with the provisions of the

Railway Labor Act. All twenty-one claims above referred to were submitted to the superintendent of The Chicago River and Indiana Railroad Company, an officer of that Railroad designated to handle such cases, who considered and ultimately declined each of the twenty-one claims. Each of the said twenty-one claims was appealed to the General Manager of The Chicago River and Indiana Railroad Company, who was designated by that Railroad as the highest [fol. 10] officer to handle such claims under the Railway Labor Act. The said twenty-one claims were heard and considered at various times and were denied by the said officer on various dates between December 20, 1949 and September 4, 1953.

13. There is in effect an agreement of December 12, 1947, by and between the participating carriers represented by the Eastern, Western and Southwestern Carriers' Conference Committee of which The Chicago River and Indiana Railroad Company is one, and the employees represented by the Brotherhood of Railroad Trainmen, Paragraph 4 (c2) of which reads as follows:

> "2. This Paragraph Number 2 shall become part of *all* Schedules, effective February 1, 1948:
>
> "Decision by the highest officer designated by the carrier to handle claims shall be final and binding *unless within one year from date of said officer's decision* such claim is disposed of on the property or proceedings for the final disposition of the claim are instituted by the employe or his duly authorized representative and such officer is so notified. It is understood, however, that the parties may by agreement in any particular case extend the one year period herein referred to." (Italics added).

14. The General Manager's decisions above referred to in twenty of the twenty-one cases became binding within one year of the date of said decision by reason of the failure of the employee involved or his duly authorized representative to institute proceedings for the final disposition of the claims.

15. Defedants heretofore called a strike for six A. M. Monday, June 7th, 1954, in order to coerce The Chicago

River and Indiana Railroad Company into meeting the demands contained in the said twenty-one grievances and claims. The said strike was postponed when the National Mediation Board proffered its services as of June 14, 1954. The efforts of the National Mediation Board to mediate these disputes failed, whereupon the National Mediation Board withdrew on July 15, 1954. In the meantime The Chicago River and Indiana Railroad Company submitted, pursuant to the terms of the Railway Labor Act, each of the said claims to the First Division of the National Railroad Adjustment Board, which has not yet rendered a decision in any of them.

[fol. 11] 16. Notwithstanding The Chicago River and Indiana Railroad Company has complied with every provision of the contracts and agreements between it and defendants, and with every provision of the Railway Labor Act in the handling of these claims and grievances, the defendants, and each of them, have threatened an immediate strike of all employees of the classes of yard foremen and yard helpers (including switch tenders), and have set as a date for said strike July 19, 1954.

17. The said strike threat, if carried into effect, would paralyze The Chicago River and Indiana Railroad Company's railroad operation and prevent the transportation of persons and property over it. The purpose of said strike is to force that Railroad, by the use of self-help by defendants and the employees of that Railroad represented by defendants, to settle grievances or claims for compensation without submitting such disputes or grievances to the National Railroad Adjustment Board, all of which is contrary to law.

It is the public policy of the United States, stated in Section 2, First, of the Railway Labor Act, that it shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof. An interruption

of commerce or an interruption of the operations of The Chicago River and Indiana Railroad Company by strike or stoppage, called, led or participated in by defendants pending final and ultimate decision by the National Railroad Adjustment Board would constitute a violation of said public policy. The first and primary purpose of the Railway Labor Act, as stated in General Purpose (1) in Section 2, is "To avoid any interruption to commerce or to the operation of any carrier engaged therein." A strike on The Chicago River and Indiana Railroad Company would interrupt commerce and the operation of all the plaintiff carriers involved herein and would, therefore, violate the purposes of the Railway Labor Act.

18. Plaintiffs allege that the threatened strike is in violation of their constitutional and property rights. Un- [fol. 12] interrupted services of yard foremen and yard helpers are essential to the operation of The Chicago River and Indiana Railroad Company, and stoppage of operations would cause that Railroad thousands of dollars of damages daily and would require it to lay off approximately 1,100 employees who would lose an aggregate amount of money in excess of $12,000 wages daily for each day of such strike or stoppage. The Chicago River and Indiana Railroad Company will be compelled to embargo shipments into and out of the stock yards of Chicago which would immediately cause irreparable damages to the 600 industries and the 27 railroads served by it. These 27 railroads (the other plaintiffs herein) would incur thousands of dollars of damages for each day of such strike. The adverse effects upon business and the public generally would cost hundreds of thousands of dollars of damages each day the strike is in effect.

19. Defendants and each of them by their threatened actions are in violation of the agreements between plaintiffs and defendants covering the disposition of minor grievances, claims and disputes of this kind, and are in violation of the Railway Labor Act and the Constitution of the United States. The defendants and each of them have failed to exhaust remedies available to them under the Railway Labor Act for the handling and final disposition

of the above claims. In the case of twenty of the twenty-one claims, the decision of the General Manager as the highest officer of the carrier designated to handle such claims has become final and binding by reason of the failure of the employees and of defendants to take action for final disposition within one year from the date of the decision.

20. Plaintiffs are informed and believe that this controversy does not involve a labor dispute within the meaning of the Norris LaGuardia Act (29 U. S. C. 101 et seq.). Plaintiffs are informed and believe that if there is a labor dispute which gives rise to the threatened strike or work stoppage, the threatened acts are unlawful and in violation and defiance of the Railway Labor Act and that the Norris LaGuardia Act has no application in the premises.

21. Notwithstanding that there is no such labor dispute, The Chicago River and Indiana Railroad Company has made every reasonable effort to settle with defendants the twenty-one grievances and claims which underlie the threatened strike or work stoppage through negotiation and through the mediation efforts of the National Medi- [fol. 13] ation Board but defendants have refused to accept the proposals of the Mediation Board and have not joined with The Chicago River and Indiana Railroad Company in submitting the grievances to the National Railroad Adjustment Board as required by the Railway Labor Act.

22. Plaintiffs are without any plain, simple and adequate remedy save in a court of chancery.

Wherefore, Plaintiffs pray:

(1) That the Court issue a preliminary injunction and ultimately a permanent injunction in and by which the defendants and each of them, their agents, servants, counsellors and all acting by, through, or for them, or on their behalf will be enjoined and restrained from conducting any strike, stoppage, or other act of economic coercion to force or coerce The Chicago River and Indiana Railroad Company into settling the claims, grievances and disputes herein referred to which have been filed with the National Railroad Adjustment Board.

(2) That the Court grant plaintiffs such other relief as may be meet, including their costs herein.

Marvin A. Jersild, Wayne M. Hoffman, Kenneth F. Burgess, Douglas F. Smith, Walter J. Cummings, Jr., Attorneys for Plaintiffs.

Sidley, Austin, Burgess & Smith, Of Counsel.

Duly sworn to by Wilber F. Davis. Jurat omitted in printing.

[fol. 14] EXHIBIT 1 TO AMENDED COMPLAINT

List of Plaintiffs Herein.

Name	Incorporated in
The Chicago River and Indiana Railroad Company	Illinois
The Atchison, Topeka and Santa Fe Railway Company	Kansas
The Baltimore and Ohio Railroad Company	Maryland
The Baltimore and Ohio Chicago Terminal Railroad Company	Illinois
The Belt Railway Company of Chicago	Illinois
The Chesapeaks and Ohio Railway Company (C & O District)	Virginia
The Chesapeake and Ohio Railway Company (Pere Marquette District)	Virginia
Chicago & Eastern Illinois Railroad Company	Indiana
Chicago and North Western Railway Company	Wisconsin
Chicago and Western Indiana Railroad Company	Illinois
Chicago, Burlington & Quincy Railroad Company	Illinois

Name	Incorporated in
Chicago Great Western Railway Company	Illinois
Chicago, Indianapolis and Louisville Railway Company	Indiana
Chicago Junction Railway Company	Illinois
Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Wisconsin
Chicago, Rock Island & Pacific Railroad Company	Delaware
Elgin, Joliet and Eastern Railway Company	Illinois, Indiana
Erie Railroad Company	New York
Grand Trunk Western Railroad Company	Michigan, Indiana
Gulf, Mobile and Ohio Railroad Company	Mississippi
[fol. 15]	
Illinois Central Railroad Company	Illinois
Illinois Northern Railway Company	Illinois
Indiana Harbor Belt Railroad Company	Indiana
The Minneapolis, St. Paul & Sault Ste. Marie Railroad Company	Minnesota
The New York Central Railroad Company	New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois
The New York, Chicago and St. Louis Railroad Company	New York, Pennsylvania, Indiana, Illinois, Ohio
The Pennsylvania Railroad Company	Pennsylvania
Wabash Railroad Company	Ohio

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IN THE DISTRICT COURT OF THE UNITED STATES

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MOTION TO VACATE TEMPORARY RESTRAINING ORDER AND TO DISMISS ACTION—Filed August 2, 1954

Come now Brotherhood of Railroad Trainmen, Brotherhood of Railroad Trainmen Lodge #964, Felix A. Kazmer, General Chairman, Lodge #964, Michael V. Smalley, Secretary, Lodge #964, George C. Hofer, committeeman, Lodge #964, and W. M. Dolan, Vice President, Brotherhood of Railroad Trainmen, all defendants herein, by their attorneys, Henslee, Monek and Murray, by Henry W. Lehmann, and respectfully move this Court to make and enter an order vacating the temporary restraining order granted herein, denying plaintiff's request for a preliminary in- [fol. 16] junction or a permanent injunction as well as for any other relief, dismissing the complaint herein, and taxing all costs to the plaintiff on the grounds that:

1. This case involves and grows out of a labor dispute or controversy between the plaintiff carrier and its employees employed as yard foremen and yard helpers (including switch tenders) concerning terms and conditions of employment, namely, claims and grievances relating to compensation of certain of plaintiff's employees and to the reinstatement of two of plaintiff's employees to their former positions as set out in Paragraph 12 of plaintiff's Complaint.

2. The temporary restraining order issued herein on July 16, 1954, pursuant to plaintiff's complaint and the other injunctive relief sought in said complaint prohibits plaintiff's employees from ceasing or refusing to perform any work for plaintiff and from picketing and engaging in other conduct as set forth in the prayer for relief in said complaint and in the said temporary restraining order.

3. Plaintiff does not allege in said complaint or elsewhere that defendants have conducted any of the said activities enjoined by the said temporary restraining order or sought by plaintiff's Complaint to be enjoined, or that the defendants have engaged in any such activities in a manner involving fraud or violence; and in fact defend-

ants have not engaged in such activities either with or without fraud or violence.

4. Pursuant to the provisions of the Norris LaGuardia Act (29 U. S. C. 101 et seq., more particularly Section 104), this Court lacks jurisdiction to issue a restraining order or temporary or permanent injunction which prohibits the conduct which plaintiff here seeks to enjoin as set forth in its Complaint in a case involving or growing out of a labor dispute or controversy concerning terms and conditions of employment.

Respectfully submitted, Henry W. Lehmann, Attorney for Brotherhood of Railroad Trainmen.

Henslee, Monek & Murray, 139 North Clark Street, Suite 810, Chicago 2, Illinois, STate 2-5925.

* * * * * * *

[fol. 17] IN THE DISTRICT COURT OF THE UNITED STATES

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ORDER RE MOTION TO DISMISS—August 6, 1954

This cause coming on for hearing on defendants' Motion to enter an Order that the Motion to Dismiss this Action heretofore filed in this proceeding shall stand as a Motion to Dismiss the Amended Complaint filed herein on August 2, 1954, and to deny the relief therein requested, and the Court having heard arguments of counsel and being fully advised,

It Is Hereby Ordered that the defendants' Motion be granted and that the Motion to Dismiss the Action filed herein stand as a Motion to Dismiss the Amended Complaint filed herein on August 2, 1954 and to deny the relief therein requested.

Enter:

Igoe, Judge.

Dated this 6th day of August, 1954.

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IN THE DISTRICT COURT OF THE UNITED STATES

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ANSWER TO AMENDED COMPLAINT—Filed August 12, 1954

First Defense

1. The defendants admit the allegations in Paragraphs 1, 2, 3, 4, 5 and 6 of the Amended Complaint.

2. Referring to Paragraph 7 of the Amended Complaint, defendants admit the allegations thereof except that de- [fol. 18] fendants do not have sufficient information to form a belief as to the truth or falsity of the allegation that plaintiffs, other than The Chicago River and Indiana Railroad, would be adversely affected by any stoppage in the operations of The Chicago River and Indiana Railroad, and, therefore, deny the same.

3. Referring to Paragraph 8 of the Amended Complaint, defendants deny that this Court has jurisdiction of this suit. They deny that this is an action arising under the Constitution of the United States on the Fifth Amendment or the laws regulating commerce. They deny that this Court has jurisdiction of this action under the provisions of 28 U. S. C. 1331 and 1337, or of 45 U. S. C. 151 et seq., or 49 U. S. C. 1 et seq., or under any provisions of the aforesaid statutes. These defendants allege that they do not have sufficient information to form a belief as to the truth or falsity of the allegation that this action involves matter in controversy in excess of the sum of Three Thousand Dollars ($3,000.00) exclusive of interest and costs, and, therefore, deny the same. These defendants further allege that this Court lacks jurisdiction in this action pursuant to the provisions of the Norris LaGuardia Act (29 U. S. C. 101 et seq.)

4. Referring to Paragraph 9 of the Amended Complaint, defendants admit the allegations thereof except that they do not have sufficient information to form a belief as to the truth or falsity of the allegation that The Chicago River and Indiana Railroad Company cannot operate its railroad without the performance of these duties, and therefore, deny the same.

5. Referring to Paragraph 10 of the Amended Complaint, defendants admit that the Railway Labor Act, as amended

from time to time, is applicable to plaintiff. The Chicago River and Indiana Railroad Company and its employees represented by defendants, and to the other plaintiffs and the employees of the other plaintiffs represented by defendants to the extent and in the manner set forth in said legislation. Defendants admit that the Railway Labor Act (45 U. S. C. 151(a)) states its general purposes to be, among others, to avoid any interruption to commerce or to operation of any carrier engaged therein and to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules and [fol. 19] working conditions. Defendants deny the allegations of the second sub-paragraph of Paragraph 10 of the Amended Complaint and each and every allegation thereof. Defendants deny that Congress has established a compulsory administrative machinery under the Railway Labor Act or that parties to a collective agreement are required by said Act to submit controversies such as those here involved to the National Railroad Adjustment Board as set forth in said paragraph without resorting to self-help. Defendants allege that the procedures and administrative machinery set up under the Railway Labor Act are voluntary and that said Act does not prohibit strikes and other concerted labor union activity.

6. Defendants admit the allegations of Paragraph 11 of the Amended Complaint.

7. Referring to Paragraph 12 of the Amended Complaint, defendants admit the allegations thereof except that particular allegation therein that the nineteen claims for additional compensation, the one claim for reinstatement of an employee to the position of yard foreman and the one claim for reinstatement of a discharged employee were handled on the property in accordance with the various agreements between The Chicago River and Indiana Railroad Company and defendants, and in accordance with the provisions of the Railway Labor Act, which allegation is herewith denied. Defendants allege with respect thereto that contrary to the provisions of the Railway Labor Act, as amended, The Chicago River and Indiana Railroad Company has failed to exert every reasonable effort to settle

the twenty-one claims and grievances concerning the terms and conditions of employment of employees of said plaintiff as aforesaid.

8. Defendants admit the allegations of Paragraph 13 of the Amended Complaint.

9. Referring to Paragraph 14 of the Amended Complaint, defendants deny that the decisions of the General Manager of The Chicago River and Indiana Railroad Company became binding in twenty of the twenty-one claims as asserted by plaintiffs in the Amended Complaint. Defendants allege that The Chicago River and Indiana Railroad Company had agreed to continue to negotiate with respect to certain of these claims after a year had elapsed since the decision of the General Manager with respect to said claims and that customarily The Chicago River and In-
[fol. 20] diana Railroad Company has not in negotitions with defendants concerning claims and grievances invoked the one year time limitation of Paragraph 4 (c2) of the agreement of December 12, 1947 set forth in Paragraph 13 of the Amended Complaint.

10. Referring to Paragraph 15 of the Amended Complaint, defendants admit the allegations contained therein except that defendants deny that they called a strike to coerce The Chicago River and Indiana Railroad Company into meeting the demands contained in the said twenty-one grievances and claims. Defendants further allege that The Chicago River and Indiana Railroad Company submitted these claims to the National Railroad Adjustment Board on July 15, 1954, and that the sole issue raised by The Chicago River and Indiana Railroad Company in all of said submissions except one was the applicability to said claims and grievances of the one year time limit of Paragraph 4 (c2) of the agreement of December 12, 1947 set forth in Paragraph 13 of the Amended Complaint. Defendants further allege that defendants and the employes of The Chicago River and Indiana Railroad Company represented by defendants have not gone on strike but have strictly complied with the terms of the temporary restraining order herein issued on July 16, 1954 prohibiting any work stoppage and other concerted activity as therein set forth.

11. Referring to Paragraph 16 of the Amended Complaint, defendants admit the allegations thereof except that defendants deny that The Chicago River and Indiana Railroad Company has complied with its contracts and agreements with defendants or with the provisions of the Railway Labor Act in the handling of the aforesaid twenty-one claims and grievances.

12. Referring to Paragraph 17 of the Amended Complaint, these defendants allege that they do not have sufficient information to form a belief as to the truth or falsity of the allegation that said strike would paralyze the railroad operation of The Chicago River and Indiana Railroad Company and prevent the transportation of persons and property over it, and therefore, deny the same. Defendants allege that the strike was called to settle said claims and grievances equitably and speedily through collective bargaining and because of the refusal and failure of The Chicago River and Indiana Railroad Company to exert reason-
[fol. 21] able efforts to settle the twenty-one grievances, as required by the Railway Labor Act, as amended. Defendants deny that the purpose of said strike is to force The Chicago River and Indiana Railroad Company by use of self-help to settle grievances or claims for compensation without submitting such grievances or claims to the National Railroad Adjustment Board but admit that the effect of the strike, if successful, would be settlement of said grievances through collective bargaining instead of by award of the National Railroad Adjustment Board. Defendants admit that the first sentence of the second sub-paragraph of Paragraph 17 of the Amended Complaint sets forth the language of Section 152 First of the Railway Labor Act, as amended. Defendants deny that a work stoppage under the circumstances of this case called, led or participated in by defendants pending final and ultimate decision by the National Railroad Adjustment Board would constitute a violation of any public policy set forth in the Railway Labor Act and further deny that the Railway Labor Act, as amended from time to time, prohibits the work stoppage called for July 19, 1954, which plaintiffs herein have petitioned the Court to enjoin. Defendants admit that the third sentence of the second sub-paragraph

of Paragraph 17 of the Amended Complaint sets forth the language of one of the purposes declared by the Railway Labor Act. Defendants deny that said matter in the said sentence constitutes the first and primary purpose of the Railway Labor Act and allege that said matter constitutes only one of several equally important purposes of the Railway Labor Act. Defendants allege that they do not have sufficient knowledge to form a belief as to the truth or falsity of the allegation that a strike in The Chicago River and Indiana Railroad Company would interrupt commerce and the operation of all the plaintiff carriers involved herein and, therefore, deny the same. Defendants deny that a strike on The Chicago River and Indiana Railroad Company under the circumstances of this case would violate the purposes of the Railway Labor Act and further deny that the Railway Labor Act, as amended from time to time, prohibits the strike called for July 19, 1954 which plaintiffs herein have petitioned this Court to enjoin.

13. Referring to Paragraph 18 of the Amended Complaint, defendants deny that the strike called for July 19, [fol. 22] 1954 is in any way a violation of the constitutional or property rights of the plaintiffs herein or any of them. As to the other allegations in Paragraph 18, defendants allege that they do not have sufficient information to form a belief as to the truth or falsity thereof and, therefore, deny the same.

14. Referring to Paragraph 19 of the Amended Complaint, defendants deny that the strike called for July 19, 1954 or that any concerted activities planned in connection therewith were or are in violation of the agreements between The Chicago River and Indiana Railroad Company and defendants. Defendants deny that any of their actions as aforesaid are in violation of any agreements between defendants and the other plaintiffs herein, and defendants allege that the plaintiffs other than The Chicago River and Indiana Railroad Company are not parties to the dispute concerning the twenty-one claims and grievances referred to hereinabove. Defendants further deny that any such actions are in violation of either the Railway Labor Act or of the Constitution of the United States. Defendants admit that they have not filed submissions of the

twenty-one grievances herein involved with the National Railroad Adjustment Board but allege that the Railway Labor Act, as amended from time to time, does not impose any legal compulsion upon defendants to submit grievances or claims to said Board. Defendants deny that the decisions of the General Manager of The Chicago River and Indiana Railroad Company with respect to the claims here involved are final or binding.

15. Referring to Paragraph 20 of the Amended Complaint, defendants deny the allegation thereof. Defendants allege that this controversy grows out of and involves a labor dispute within the meaning of the Norris LaGuardia Act (29 U. S. C. 101 et seq.) and that under said statute this Court lacks jurisdiction to issue a temporary restraining order or a preliminary or permanent injunction in this proceeding. Defendants deny that any acts by them in relation to the work stoppage or strike called for July 19, 1954, are unlawful or in violation or in defiance of the Railway Labor Act or any of its provisions, and allege that the Norris LaGuardia Act applies to this proceeding.

16. Referring to Paragraph 21 of the Amended Complaint, defendants admit that the twenty-one grievances or claims involved in this proceeding underlie the work stoppage or strike called for July 19, 1954. Defendants [fol. 23] allege that neither the Railway Labor Act, as amended from time to time, nor any other law, impose a legal compulsion upon defendants or other labor organization to accept proposals of the Mediation Board or to join in submitting grievances to the National Railroad Adjustment Board and further allege that they have not refused to accept any reasonable proposals of said Board. Defendants deny that The Chicago River and Indiana Railroad Company has made every reasonable effort to settle the twenty-one grievances herewith involved and defendants further deny that they or any of them have in any way failed to comply with any of the requirements imposed by the Railway Labor Act.

17. Defendants deny the allegations of Paragraph 22 of the Amended Complaint.

Second Defense

The Amended Complaint fails to state a claim against defendants or any of them upon which relief can be granted.

Third Defense

This Court lacks jurisdiction, pursuant to the provisions of the Norris LaGuardia Act (29 U. S. C. 101 et seq.) to grant the relief prayed for in the Amended Complaint.

Wherefore defendants pray that this Court vacate the temporary restraining order issued on July 16, 1954, that it deny plaintiffs both the preliminary and permanent injunction requested by it, that it dismiss the Amended Complaint, and that costs be taxable to plaintiffs and execution leveied therefore.

Brotherhood of Railroad Trainmen, Brotherhood of Railroad Trainmen Lodge 964, Felix E. Kazmer, General Chairman Lodge 964, George C. Hofer, Committeeman Lodge 964, Michael V. Smalley, Secretary Lodge 964, W. M. Dolan, Vice President, Brotherhood of Railroad Trainmen, Defendants, By Henry W. Lehmann, Their Attorney. Henslee, Monek & Murray, 139 North Clark Street, Chicago 2, Illinois, STate 2-5925.

[fol. 24] *Duly sworn to by Felix E. Kazmer. Jurat omitted in printing.*

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In the District Court of the United States

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Motion for Preliminary Injunction—
Filed August 13, 1954

Now come the plaintiffs, The Chicago River and Indiana Railroad Company, et al., and move this Court to enter an

order for a preliminary injunction against the above-named defendants. The grounds for this motion are:

1. Plaintiffs allege and defendants admit that defendants have called a strike to obtain a settlement of grievances rather than process said grievances in the National Railroad Adjustment Board.

2. The Railway Labor Act (45 U.S.C. Sec. 151 *et seq.*) provides mandatory procedure for the settlement of grievances, which procedure is to process them through the National Railroad Adjustment Board, if the claimants wish to go further than "the chief operating officer of the carrier designated to handle such disputes" (Sec. 3 First (i)).

[fol. 25] 3. The effect of the threatened strike by defendants would be to coerce the settlement of these grievances in a manner contrary to the command and purposes of the Railway Labor Act.

4. The commands of the Railway Labor Act are enforceable by judicial action, and the only way to obtain enforcement of the Act in this case is to enjoin this strike so that the parties may proceed under the Act.

5. The duties of the employees whose services will be suspended by the threatened strike are essential to the operation of the plaintiff Chicago River and Indiana Railroad Company. A strike of those employees will halt operations on that railroad, will halt essential shipments of perishable foodstuffs and other goods on the other plaintiff railroads, and will cause damage to all of the plaintiffs of thousands of dollars a day and to the public of even more, all of which is irreparable.

6. Maintenance of the *status quo* would not do any substantial harm to defendants, since the statutory procedures for the settlement of these grievances will continue to be open to them, and it is to the interest of the employees represented by defendants to explore every means of avoiding a cessation of their work.

Wherefore, for the above reasons and for the reasons stated in their verified Amended Complaint, plaintiffs pray this Court for a preliminary injunction, in the interests of

justice and to maintain the *status quo*, enjoining defendants from carrying out the threatened strike.

Marvin A. Jersild, Wayne M. Hoffman, William K. Bachelder, Kenneth F. Burgess, Douglas F. Smith, Walter J. Cummings, Jr., Attorneys for Plaintiffs.

Sidley, Austin, Burgess & Smith, Of Counsel.

[fol. 26] FEDERAL REPUBLIC OF GERMANY,
City of Munich,

United States Consular Service, ss.

AFFIDAVIT OF M. W. CLEMENT

M. W. Clement, being first duly sworn, on oath deposes and says that:

1. He resides in Rosemont, Pennsylvania.

2. At the time Congress enacted the 1934 amendments to the Railway Labor Act, he was chairman of the committee of railroads delegated to deal with that legislation. As such, he officially represented all Class I railroads in the United States and was selected to give their views to the Senate and House Committees considering that legislation.

3. In that capacity, he became very familiar with the proposed legislation and conferred thereon with representatives of government and labor.

4. Some of the principal purposes of the Railway Labor Act, as amended in 1934, were "To avoid any interruption to commerce or to the operation of any carrier engaged therein" and "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

5. The 1934 legislation established the National Railroad Adjustment Board to adjudicate disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions."

6. Under that legislation, when employees and carriers fail to reach an adjustment of such disputes and wish to have them settled, the disputes must be referred to the

National Railroad Adjustment Board for decision pursuant to Section 3 First (i) of the Railway Labor Act.

7. In order to avoid interruptions to commerce, the Railway Labor Act, as amended in 1934, established the National Railroad Adjustment Board to decide such disputes and prohibited strikes over them. Congress substituted [fol. 27] administrative processes for strikes in this area.

Further affiant sayeth not.

FEDERAL REPUBLIC OF GERMANY,
Land Bavaria,
City of Munich,
Consulate General of the
United States of America, ss.

M. W. Clement

Subscribed and sworn to before me this 9 day of August, 1954.

United States Consular Service. Thomas A. DeHart, American Vice Counsel. (Seal)

Foe No. 24.
Service No. 4804.
$2.00 equal to 8-40 Marks. $2.00 Stamp.

STATE OF ILLINOIS,
County of Cook, ss.

AFFIDAVIT OF WILBER F. DAVIS

Wilber F. Davis, being first duly sworn, on oath deposes and says that:

1. He resides in Hammond, Indiana, and has his office in Chicago, Illinois.

2. He is General Manager of The Chicago River and Indiana Railroad Company, and has been such since April, 1953.

3. In that capacity, and because of his background of many years in the railroad industry, he has become very familiar with the operations of this plaintiff and the other plaintiffs. He has read and verified the Amended Complaint in this action.

4. The Chicago River and Indiana Railroad Company cannot operate its railroad without the performance of the duties of yard foremen and yard helpers.

5. Stoppage of the performance of the duties of yard foremen and yard helpers would stop operation of the Chicago River and Indiana Railroad. This would cause [fol. 28] that Railroad to lose thousands of dollars daily. It would require it to lay off approximately 1,100 employees. It would force it to embargo shipments into and out of the stockyards of Chicago, which would mean to embargo shipments to and from the 27 other plaintiff railroads in this action.

6. He and his subordinates on The Chicago River and Indiana Railroad Company exerted every reasonable effort to settle the twenty-one grievances stated in the above-mentioned Amended Complaint.

7. The effect of a strike on these railroads will be such that he knows of no other adequate redress than the relief sought.

Further affiant sayeth not.

Wilber F. Davis,

Subscribed and sworn to before me this 10th day of August, 1954.

L. E. Matthews, Notary Public. (Seal)

* * * * * * *

UNITED STATES DISTRICT COURT

* * * * * * *

BOND—Approved August 17, 1954

Know All Men by These Presents, that we, The Chicago River and Indiana Railroad Company, an Illinois Corporation, et al., as principals, and Hartford Accident and Indemnity Company, a Connecticut Corporation, as Surety, are held and firmly bound unto Brotherhood of Railroad Trainmen, Lodge #964, Brotherhood of Railroad Trainmen, a Voluntary Association, Felix E. Kazmer, General Chairman, Lodge #964, Michael V. Smalley, Secretary, Lodge #964, George C. Hofer, Committeeman, Lodge

#964; W. M. Dolan, Vice President, Brotherhood of Railroad Trainmen, Defendants in the above entitled cause, in the sum of Twenty Thousand ($20,000.00) Dollars, to the payment of which we bind ourselves, our successors, and assigns, firmly by these presents.

[fol. 29] The condition of the above obligation is such that whereas The Chicago River and Indiana Railroad Company, et al., plaintiffs in the above entitled cause, have obtained from the District Court of the United States for the Northern District of Illinois, Eastern Division, a temporary restraining order to enjoin defendants as prayed for in the complaint and amended complaint in the above entitled cause, upon condition that the said plaintiffs shall execute and file a good and sufficient bond to the said defendants for the sum of Twenty Thousand ($20,000.00) Dollars to secure the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Now, if the above bounden, The Chicago River and Indiana Railroad Company, et al., and Hartford Accident and Indemnity Company shall well and truly pay all such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained by reason of said temporary restraining order should it be thereafter dissolved or it be decided that such temporary restraining order was wrongfully obtained, then this obligation to be void, otherwise to remain in full force and virtue.

Sealed and dated this 17th day of August, 1954 on behalf of all of the plaintiffs in the above entitled cause.

The Chicago River and Indiana Railroad Company, By D. A. Fawcett, Vice President. Hartford Accident and Indemnity Company, Thomas F. Doyle, Thomas F. Doyle, Attorney-in-fact. (Seal)

Approved: August 17, 1954. John P. Barnes.

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[fol. 30] UNITED STATES DISTRICT COURT

Chicago 4

MEMORANDUM OF COURT, KNOCH, J.—March 21, 1955

Chambers of Judge Win. G. Knoch, Mr. William K. Bachelder, Mr. Kenneth F. Burgess, Mr. Douglas F. Smith, Mr. Walter J. Cummings, Jr., Sidley, Austin, Burgess & Smith, 11 South LaSalle Street, Chicago 3, Illinois.

Mr. Henry W. Lehmann, Henslee, Monek & Murray, 130 N. Clark Street, Chicago 2, Illinois.

Mr. Marvin A. Jersild, Mr. Wayne M. Hoffmann, Suite 1236 LaSalle Station, Chicago 6, Illinois.

Re: The Chicago River and Indiana Railroad Company, et al, plaintiffs, vs. Brotherhood of Railroad Trainmen, et al, defendants. Case No. 54 C 1024.

Gentlemen:

This matter came on to be heard on defendants' motion to vacate temporary restraining order heretofore issued in this cause.

I have devoted a great deal of thought and consideration to the questions raised in connection with this motion, having due regard for the gravity of the matter.

I have had the benefit of your arguments presented verbally and upon briefs and have studied closely all authorities to which reference was made.

[fol. 31] It is my considered opinion that the Norris-LaGuardia Act is applicable in the present case and that this Court lacks jurisdiction to grant the relief sought by plaintiffs.

Accordingly an order is being entered this date dissolving the temporary restraining order and dismissing the action.

Yours truly, Win G. Knoch, United States District Judge.

WGK:f

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UNITED STATES DISTRICTT COURT

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ORDER OF DISMISSAL—March 21, 1955

On motion of the defendants by their counsel it is Ordered that the temporary restraining order heretofore entered herein be and the same hereby is disolved and it is Further Ordered that this cause be and the same hereby is dismissed.

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[fol. 32] IN THE DISTRICT COURT OF THE UNITED STATES
For The Northern District Of Illinois
Eastern Division

[Title omitted]

NOTICE OF APPEAL—Filed April 19, 1955

Notice is hereby given that all the plaintiffs in this cause hereby appeal to the United States Court of Appeals for the Seventh Circuit from the order dismissing this action entered herein on March 21, 1954.

(S.) Marvin A. Jersild, (S.) Wayne M. Hoffman, (S.) William K. Bachelder, (S.) Kenneth F. Burgess, (S.) Douglas F. Smith, (S.) Walter J. Cummings, Jr., Attorneys for Appellants, 11 South LaSalle Street, Chicago 3, Illinois, STate 2-5400. Sidley, Austin, Burgess & Smith, Of Counsel.

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[fol. 33] CERTIFICATE OF MAILING (Omitted in Printing)

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UNITED STATES DISTRICT COURT

* * * * * * *

STATEMENT OF POINTS ON APPEAL—Filed April 19, 1955

Appellants, plaintiffs in the above-named action, state that the points on which they intend to rely in this action are:

1. The Court erred in holding that this action should be dismissed because the Norris-LaGuardia Act applied and the Court lacked jurisdiction to grant the relief sought by plaintiffs.

[fol. 34] 2. The Court erred in not granting to plaintiffs a preliminary injunction.

3. The Court erred in dismissing this action.

4. The Court erred in not holding that under the Railway Labor Act, grievances prosecuted beyond the designated chief operating officer of the carrier are to be resolved by the National Railroad Adjustment Board rather than by strike.

(S.) Marvin A. Jersild, (S.) Wayne M. Hoffman, (S.) Kenneth F. Burgess, (S.) Douglas F. Smith, (S.) Walter J. Cummings, Jr., (S.) William K. Bachelder, Attorneys for Appellants, 11 South LaSalle Street, Chicago 3, Illinois, STate 2-5400.

Of Counsel: Sidley, Austin, Burgess & Smith, 11 South LaSalle Street, Chicago 3, Illinois.

Service of a copy of the foregoing statement of points on appeal acknowledged this 19th day of April, 1955.

Henry W. Lehmann, Attorney for Appellees.

* * * * * * *

UNITED STATES DISTRICT COURT

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DESIGNATION OF RECORD ON APPEAL—Filed April 19, 1955

To the Clerk of the United States District Court for the Northern District of Illinois:

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, appellants, plaintiffs in this action, designate

the following portions of the record in the above-entitled [fols. 35-41] cause as the record on appeal in this action to the United States Court of Appeals for the Seventh Circuit:

1. Amended Complaint.
2. Motion to vatcate temporary restraining order and to dismiss action, dated July 28, 1954.
3. Order of August 6, 1954, that motion to dismiss action shall stand as a motion to dismiss amended complaint.
4. Answer to Amended Complaint.
5. Motion for preliminary injunction, dated August 13, 1954, and the two affidavits attached thereto.
6. Bond, filed August 17, 1954.
7. Judge Knoch's letter of March 21, 1955, to counsel containing opinion as to disposal of case.
8. Order of March 21, 1955, dismissing case.
9. The Notice of Appeal.
10. This designation of points on appeal.
11. Statement of points on appeal.

(S.) Marvin A. Jersild, (S.) Wayne M. Hoffman, (S.) Kenneth F. Burgess, (S.) Douglas F. Smith, (S.) Walter J. Cummings, Jr., (S.) William K. Bachelder, Attorneys for Appellants.

Of Counsel: Sidley, Austin, Burgess & Smith, 11 South LaSalle Street, Chicago 3, Illinois. STate 2-5400.

Acknowledgment of Service

Service of above Designation acknowledged this 19th day of April, 1955.

Henry W. Lehmann.

[fol. 42] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 43] IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1955—JANUARY SESSION, 1956

No. 11474

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, *et al.*, *Plaintiffs-Appellants*,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*, *Defendants-Appellees*

OPINION—February 6, 1956

Before FINNEGAN, LINDLEY and SCHNACKENBERG, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* By amended complaint the Chicago River and Indiana Railroad Company [1] and 27 other railroads prayed for an injunction to restrain the Brotherhood of Railroad Trainmen [2] from calling a threatened strike against the River Road. Trainmen's counsel state that the purpose of said strike is to settle 21 grievances and claims through collective bargaining rather than by an award of the National Railroad Adjustment Board.[3] The district court granted a restraining order which was later dissolved when the court decided that the Norris-LaGuardia act was applicable and, therefore, it lacked jurisdiction to grant the relief sought. It dismissed the cause. The court subsequently granted an injunction pending the determination of this appeal, which was taken from the judgment of dismissal.

[fol. 44] The grievances of the employees involved are 19 claims for additional compensation, 1 claim for reinstatement to a higher position, and 1 claim for reinstatement to the employ of the River Road. Each of these claims was

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[1] Sometimes referred to herein as "River Road".

[2] Sometimes referred to herein as "Trainmen".

[3] Sometimes referred to herein as the "Board".

presented to the railroad superintendent who handles such cases. Each was appealed to the highest railroad officer designated to handle claims under § 3 First (i) of the Railway Labor Act (45 U. S. C. A. § 153 First (i)), and was denied by him.

The amended complaint charges that this strike would halt the operations of all trains into and out of the Chicago Stockyards, force the River Road to lay off 1,100 employees, who would lose in excess of $12,000 a day in wages, cost the company thousands of dollars a day, and require the embargo of all shipments into and out of the Stockyards, causing irreparable damage to the 27 railroads (the other plaintiffs) and the 600 industries served. The Trainmen's answer alleges that they do not have sufficient information to form a belief as to the truth or falsity of these charges and, therefore, they deny the same. The amended complaint was dismised without the taking of evidence.

The amended complaint and the answer show that the River Road, on July 15, 1954, submitted to the Board the claims in dispute and the Board has not yet rendered a decision on any of them.

The first contested issue herein, as stated by the Trainmen, is: "Does the Railway Labor Act prohibit a union from striking over claims and grievances, matters which are within the jurisdiction of the National Railroad Adjustment Board?" Plaintiffs say that it is mandatory under the Railway Labor Act that minor disputes[4] be adjusted instead of being made the subject of a strike. They contend that such command must be enforced, even though the act itself does not provide enforcement machinery, and that an injunction is appropriate to this end. The Trainmen contend that the Railway Labor Act does not prohibit a union from striking over claims and grievances though such matters are within the jurisdiction of the Board. Their answer avers that the effect of the strike, if successful, would be settlement of said disputes through collective bargaining instead of by award of the Board.

[fol. 45] 1(a). The Railway Labor Act of 1926, as

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[4] It is agreed that the claims and grievances which are the subject of the suit at bar are all so-called "minor disputes".

amended in 1934,[5] expressly states its purposes,[6] the first of which is "To avoid any interruption to commerce or to the operation of any carrier engaged therein;" and the fifth of which is "to provide for the prompt and orderly settlement of all disputes growing out of grievances * * *."

The difference between disputes over grievances and disputes concerning the making of collective agreements is traditional in railway labor affairs. It has assumed large importance in the Railway Labor Act of 1934, substantively and procedurally. *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711, at 722. As to disputes over grievances, the act contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. Such a dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. So-called minor disputes, involving grievances, the 1934 act sets apart from major disputes and provides for them very different treatment. The court said, (ibid 724):

> "The Act treats the two types of dispute alike in requiring negotiation as the first step toward settlement and therefore in contemplating voluntary action for both at this stage, in the sense that agreement is sought and cannot be compelled. To induce agreement, however, the duty to negotiate is imposed for both grievances and major disputes.
>
> Beyond the initial statges of negotiation and conference, however, the procedures diverge. 'Major disputes' go first to mediation under the auspices of the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, cf. § 7; *Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50; and finally to possible presidential intervention to secure adjustment. § 10. For their settlement the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration, and conciliation. Every facility for bringing about agree-

[5] 45 U. S. C. A. § 151 et seq.

[6] Ibid, § 151a.

ment is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures designed to induce [fol. 46] agreement. § 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration.

The course prescribed for the settlement of grievances is very different beyond the initial stage. Thereafter the Act does not leave the parties wholly free, at their own will, to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement.

Prior to 1934 the parties were free at all times to go to court to settle these disputes. * * * Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments. The sponsor in the House insisted that Congress act upon them before adjournment for fear that if no action were taken a railroad crisis might take place * * *, the Adjustment Board was created and given power to decide them."

The court then said, (ibid 727):

"The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, whether or not the other is willing, provided he has himself discharged the initial duty of negotiation. § 3 First (i). Rights of notice, hearing, and participation or representation are given. § 3 First (j). In some instances judicial review and enforcement of awards are expressly pro-

vided or are contemplated. § 3 First (p); cf. § 3 First (m). When this is not done, the Act purports to make the Board's decision 'final and binding.' § 3 First (m)."

The procedure prior to 1934 was in fact and effect nothing more than one for voluntary arbitration. No dispute could be settled unless submitted by agreement of all parties. The Board was created to remove the settlement of [fol. 47] grievances from this stagnating process and bring them within a general and inclusive plan of decision. The aim was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private interests against the harmful effects of the preexisting scheme. *Elgin, J. & E. R. Co.* v. *Burley, supra*, 727.

At a hearing before a senate committee on the bill for the 1934 amendments, the Railroad Brotherhoods' representative, Mr. Harrison, stated:

> "These *railway labor organizations have always opposed compulsory determination of their controversies.* We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and * * * *we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these* organizations are willing to make." (*ibid* 728, note 24)

As to major disputes, the act requires the parties to submit to the successive procedures designed to induce agreement. § 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. That means, that as to disputes over the formation of collective agreements or efforts to secure or change them, the issue not being whether an existing agreement controls the controversy, the act recognizes the right of employees to strike, but postpones such action until the successive procedures set up by the act have been exhausted. No authority is empowered to decide this dispute, unless the parties agree to arbitration.

On the other hand, as to minor disputes, such as those relating to grievances and claims, either party may submit a dispute to the Board for decision, *whether or not the other is willing*, provided he himself has discharged the initial duty of negotiation. Except in instances where judicial review and enforcement of awards are expressly provided for or contemplated by the act (§ 3 First (p); cf. § 3 First (m)), the Board's decisions are final and binding. We hold this to mean that a strike in regard to such minor disputes, or the Board's decisions thereon, would be illegal.

(b). Plaintiffs contend that, inasmuch as it is mandatory under the Railway Labor Act that grievances be adjusted [fol. 48] on a submission by either party and that they cannot be the subject of a strike, such command must be enforced, even though the act itself does not provide enforcement machinery. The Trainmen deny this conclusion, "because no provision of the Railway Labor Act prohibits a strike over grievances * * *."

In speaking of the Railway Labor Act of 1926, in *Texas & N. O. R. Co.* v. *Ry. Clerks*, 281 U. S. 548, the court was discussing an injunction granted by a district court restraining the railroad company from interfering with its clerical employees in the matter of their organization for the purposes set forth in that act. At 569, it said:

> "The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided. * * * The right is created and the remedy exists."

The court affirmed the decree granting the injunction. To the same effect are *Virginian Ry.* v. *Federation*, 300 U. S. 515, *Steele* v. *L. & N. R. Co.*, 323 U. S. 192, at 207, and *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U. S. 768.

We, therefore, hold that the district court has jurisdiction to issue an injunction restraining the Trainmen from striking over grievances and claims, unless the Norris-LaGuardia act prevents or limits the court's power so to do.

2. The Trainmen say that the second contested issue

herein is: "Did the Trial Court err in holding that the Norris-LaGuardia Act was applicable and that it therefore lacked jurisdiction to grant the relief sought by the plaintiffs?" Plaintiffs respond that the Norris-LaGuardia act does not prevent the federal courts from issuing injunctions to enforce compliance with the provisions of the Railway Labor Act. The Trainmen argue that the Norris-LaGuardia act has divested the trial court of jurisdiction to grant the injunction sought against the threatened strike. They take the position that "no restraining order or injunction can be issued enjoining any actual or threatened strike unless the terms and conditions of the Norris-LaGuardia Act are fully complied with. Defendants so contend that such is the law even assuming that the provisions of the Railway Labor Act, here involved, will be violated by the threatened strike."

[fol. 49] In enacting the Norris-LaGuardia act in 1932[7] congress sought to correct many of the alleged abuses of the injunctive remedy which labor disputes had brought to national prominence during the quarter century preceding the act. In so doing congress purported to cover the general area comprehended by the term "labor dispute" irrespective of the parties involved or the possibilities of any special situation which might arise. The vital and unique position of the railroad industry in the economy of this country, coupled with experience acquired after the act's enactment, demonstrated in 1934 the need for special methods and techniques of handling labor disputes affecting railroads which were so distinctive as to require special treatment in the public interest.

Accordingly, the 1934 amendments to the Railway Labor Act were enacted. They provided *inter alia* for compulsory and determinative adjustment of minor disputes. As we have already seen, the compulsory features of the Railway Labor Act are enforceable by injunctions issued by the federal district courts. We cannot presume that congress, in so amending the Railway Labor Act in 1934, intended that such an injunction could not issue unless compliance

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[7] 29 U. S. C. A., § 101 et seq.

was first had with the act of 1932 dealing with the general subject of injunctions in labor disputes.

The Railway Labor Act, as amended in 1934, embodies a complete plan for avoiding any interruption to commerce or to the operation of any carrier engaged therein.[8] It is directed to the needs of the railroad industry, employers and employees alike, having in mind the paramount interest of the public. It does not call for the aid of, or submit to, the limitations of the Norris-LaGuardia act. Indeed, the provisions in regard to injunctions prohibiting strikes in labor disputes, as contained in the Norris-LaGuardia act, if controlling in a situation such as we have here, arising under the Railway Labor Act, would practically render the compulsory features of the latter act nugatory. We are unimpressed with the argument of Trainmen's counsel that damages suffered by the many persons who might be in- [fol. 50] jured by such a strike could be compensated in private suits brought therefor. A right to relief by suit for damages in such a situation would be an illusory remedy and a poor protection of the public interest. The effect of a strike against the railroads of the nation requires the expeditious intervention of a court to safeguard that interest. This can be accomplished only by the prompt employment of a court's equitable powers, primarily its injunctive power. The compulsion inherent in the Railway Labor Act requires prompt and effective use of judicial machinery and, there being no clear intention contained in that act to the effect that the Norris-LaGuardia act prohibits or limits the issuance of injunctions to implement the Railway Labor Act, we hold that the Norris-LaGuardia act does not apply to the case at bar.

As was said in *Cook County National Bank* v. *United States*, 107 U. S. 445, 27 L. Ed., 537, at 539:

> "A law embracing an entire subject, dealing with it in all its phases, may thus withdraw the subject from the operation of a general law as effectually as though, as to such subject, the general law were in terms repealed. The question is one respecting the intention of the Legislature."

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[8] 45 U. S. C. A., § 151a.

When considering the effect of the 1934 amendment which added new provisions in § 2, Ninth, of the Railway Labor Act, in *Virginian Ry.* v. *Federation*, 300 U. S. 515, at 545, the court said:

> "Neither the purposes of the later Act, as amended, nor its provisions when read, as they must be, in the light of our decision in the *Railway Clerks* case, *supra*, lend support to the contention that its enactments, which are mandatory in form and capable of enforcement by judicial process, were intended to be without legal sanction."

The court held that a decree for a mandatory injunction granted by a district court, for the purpose of enforcing the provisions of § 2, Ninth, of said act, was proper, saying, at 552:

> "More is involved than the settlement of a pri- [fol. 51] vate controversy without appreciable consequences to the public. The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved."

In answer to the contention that the Norris-LaGuardia act controlled, the court said, at 563:

> "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act."

Insofar as the Railway Labor Act, as we now interpret it, authorizes the issuance of injunctions to prevent strikes over minor disputes, it operates to repeal the provisions of the Norris-LaGuardia act, to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes. It follows that, in the case at bar, the district court has jurisdiction to entertain plaintiffs' prayer for injunctive relief.

3. The correctness of the conclusions which we have reached in this case is supported by the legislative history of the Railway Labor Act.[9]

For the reasons herein set forth, the order from which [fol. 52] an appeal has been taken is reversed and the cause is remanded to the district court with instructions to take further proceedings not inconsistent with the views herein expressed.

. . . . . .

[9] See: statement of Mr. Harrison, *ante* page 5; *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711, at 721-729; hearings before the Senate Committee on Interstate Commerce, 73d Cong., 2d Sess. (1934) on S. 3266; hearings before the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. (1934) on H. R. 7650; Senate Report No. 1065, (73d Cong., 2d Sess.); House Report No. 1944 (73d Cong., 2d Sess.) and 78 Cong. Rec. 11710-11720, 12083, 12375.

[fol. 53] UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, CHICAGO 10, ILLINOIS

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No. 11474

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, *et al.*, *Plaintiffs-Appellants*,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*, *Defendants-Appellees*.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JUDGMENT—February 6, 1956

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from be, and the same is hereby, reversed, with costs, and that this cause be, and it is hereby, remanded to the said District Court with instructions to take further proceedings not inconsistent with the views expressed in the opinion of this Court filed this day.

[fol. 54] UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, CHICAGO 10, ILLINOIS

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ORDER DENYING PETITION FOR REHEARING—March 5, 1956

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied.

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[fol. 55] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 56] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 54 C 1024

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, a Corporation, Plaintiff,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, A Voluntary Association, BROTHERHOOD OF RAILROAD TRAINMEN LODGE NO. 964, FELIX E. KAZMER, General Chairman, LODGE NO. 964, MICHAEL V. SMALLEY, Secretary, LODGE NO. 964, GEORGE C. HOFER, Committeeman, LODGE NO. 964, W. M. DOLAN, Vice President, Brotherhood of Railroad Trainmen, Defendants.

MANDATE OF U. S. C. A.—7TH CIRCUIT

Be it Remembered, that on to wit, the 16th day of July, 1954, the above-entitled action was commenced by the filing of the Complaint in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

And afterwards on, to wit, the 13th day of March, 1956 there was filed in the Clerk's office of said Court a certain Mandate Of The United States Court Of Appeals, Seventh Circuit, in words and figures following, to wit:

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To: The Honorable the Judges of the United States District Court for the Northern District of Illinois, Eastern Division.

Greeting:

Whereas, lately in the United States District Court for the Northern District of Illinois, Eastern Division before you, or some of you, in a cause between The Chicago River and Indiana Railroad Company, et al., Plaintiffs and Brotherhood of Railroad Trainmen, et al., Defendants, [fol. 57] No. 54-C-1024, an Order was entered on the Twenty-First Day of March, 1954.

as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the Seventh Circuit by virtue of The Chicago River and Indiana Railroad Company, et al., agreeably to the act of Congress, in such case made and provided, ful-y and at large appears.

And Whereas, in the term of October, in the year of our Lord one thousand nine hundred and fifty-five, the said cause came on to be heard before the said United States Court of Appeals for the Seventh Circuit, on the said transcript of record, and was argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from be, and the same is hereby, Reversed, with costs, and that this cause be, and it is hereby, Remanded to the said District Court with instructions to take further proceedings not inconsistent with the views expressed in the opinion of this Court filed this day.

Monday, February 6, 1956.

And afterwards, to-wit, on the twenty-first day of February, 1956, there was filed in the Office of the Clerk of this Court a petition for rehearing, which said petition for rehearing was denied on the fifth day of March, 1956.

And further that Appellants, The Chicago River and Indiana Railroad Company et al., recover against the Appellees, Brotherhood of Railroad Trainmen et al., the sum of one hundred, nin-ty-five & 56/100 Dollars ($195.56) for their cost herein, expended with direction to award execution thereof.

You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said Judgment notwithstanding.

Witness, the Honorable Earl Warren, Chief Justice of the United States, the twelfth day of March, in the year of our Lord one thousand nine hundred and fifty-six.

Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit.

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[fol. 58] IN THE DISTRICT COURT OF THE UNITED STATES

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MOTION FOR PERMANENT INJUNCTION—Filed March 15, 1956

Now come the plaintiffs and move this Court to enter a permanent injunction against the defendants for the reasons stated in plaintiffs' verified amended complaint, plaintiffs' motion for preliminary injunction with affidavits attached, and the attached affidavit.

Marvin A. Jersild, Wayne M. Hoffman, Kenneth F. Burgess, Douglas F. Smith, Walter J. Cummings, Jr., William K. Bachelder, Attorneys for Plaintiffs.

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[fol. 59] IN THE DISTRICT COURT OF THE UNITED STATES

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DEFENDANTS' ELECTION TO ABANDON THEIR ANSWER AND TO STAND ONLY UPON CERTAIN DEFENSES, ETC.—Filed March 15, 1956

Defendants, by their Counsel of Record, elect to abandon their Answer in this cause and to stand only upon the two following defenses of law:

1. The defense that the National Railway Labor Act does not prohibit strikes and particularly that it does not prohibit strikes over such minor grievances as are involved in this case.

[fol. 60] 2. The defense that even if the National Railway Labor Act does prohibit strikes over grievances, it does not repeal, modify, impair or otherwise affect the Norris-LaGuardia Act and does not authorize injunction as a preventive of or sanction for threatened or actual strikes such as those involved in this case.

Henslee, Monek & Murray, 139 N. Clark Street, Suite 810, Chicago 2, Illinois—STate 2-5925, Attorneys

for Brotherhood of Railroad Trainmen and other defendants.

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IN THE DISTRICT COURT OF THE UNITED STATES

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INJUNCTION—March 15, 1956

This cause coming on to be heard, and the Court having considered the verified Amended Complaint heretofore filed in this case, the defendants' answer and motion to dismiss, and the plaintiffs' motions with affidavits attached, does find the facts and conclusions as to the law as follows:

FINDINGS OF FACT

1. Plaintiffs are corporations organized and existing under and by virtue of the laws of various of the States of the United States. Plaintiffs are common carriers by railroad and are subject to the Railway Labor Act, 45 U. S. C. § 151 et seq. Plaintiff, The Chicago River and Indiana Railroad Company (hereinafter called the "River Road") is a corporation organized and existing under and by virtue of the laws of the State of Illinois and is a common carrier by rail and operates a line of railroad serving the [fol. 61] Union stockyards, Chicago, Illinois, and serves at Chicago, Illinois the lines of railroad of the other plaintiffs.

2. The defendant Brotherhood of Railroad Trainmen is a voluntary organization and is a labor organization within the meaning of the Railway Labor Act, which is, and at all times material hereto has been the recognized and acting collective bargaining agent for all of the River Road's employees who are classified as yard foremen and yard helpers (including switch tenders). The Brotherhood of Railroad Trainmen consists of a Grand Lodge and many subordinate Local Lodges, and has its principal business office in Cleveland, Ohio.

3. The defendant Brotherhood of Railroad Trainmen,

Lodge No. 964, is a local lodge of the Brotherhood of Railroad Trainmen with headquarters at Chicago, Illinois.

4. Defendants Felix E. Kazmer, Michael V. Smalley, and George C. Hofer are officers of Lodge No. 964, and defendant W. M. Dolan is vice president of the Brotherhood of Railroad Trainmen. They fairly and adequately represent their organizations and the members thereof.

5. In the conduct of its business the River Road employs a class of employees, among others, generally referred to as yard foremen and yard helpers (including switch tenders) whose duties, generally stated, are the handling and controlling of the movement of railroad cars and trains over the rails of plaintiff. Plaintiff cannot operate its railroad without the performance of these duties. These employees are all members of or represented by the Brotherhood of Railroad Trainmen and Lodge No. 964, and the River Road has recognized the Brotherhood of Railroad Trainmen as the collective bargaining agent for these said employees.

6. For many years prior to the claims and grievances hereinafter referred to and continuing up to the present time, rules and working conditions pertaining to the classes of employees known as yard foremen and yard helpers (including switch tenders) were determined by contracts between plaintiff and the Brotherhood of Railroad Trainmen entered into from time to time.

7. The River Road and the defendants have at all material times in question, and for many years prior thereto handled claims and grievances concerning individual employees of the classes mentioned in accordance with the [fol. 62] various agreements and in accordance with the provisions of the Railway Labor Act. Among the claims and grievances presented to this plaintiff for disposition were nineteen claims for additional compensation, one claim for reinstatement of a discharged employee, and one claim for reinstatement of an employee to the position of yard foreman. These grievances, disputes and claims were handled on the property of this plaintiff in accordance with the various agreements between plaintiff and defendants, and in accordance with the provisions of the Railway Labor Act. All twenty-one claims above referred to were sub-

mitted to the superintendent of the River Road, an officer designated to handle such cases, who considered and ultimately denied each of the twenty-one claims. Each of the said twenty-one claims was appealed to the General Manager of the River Road, who was designated as the highest officer to handle such claims under the Railway Labor Act. The said twenty-one claims were heard and considered at various times and were denied by the said officer on various dates between December 20, 1949 and September 4, 1953.

8. Defendants heretofore called a strike for six A. M. Monday, June 7, 1954, in order to coerce the River Road into meeting the demands contained in the said twenty-one grievances and claims. The said strike was postponed when the National Mediation Board proffered its services. The efforts of the National Mediation Board to mediate these disputes failed, whereupon the National Mediation Board withdrew on July 15, 1954. In the meantime the River Road submitted, pursuant to the terms of the Railway Labor Act, each of the said claims to the First Division of the National Railroad Adjustment Board, which has not yet rendered a decision on any of them.

9. The defendants, and each of them, have threatened an immediate strike of all employees of the classes of yard foremen and yard helpers (including switch tenders).

10. The said strike threat, if carried into effect, would paralyze the River Road's operation and prevent the transportation of persons and property over it. The purpose of said strike is to force this plaintiff, by the use of self-help by defendants and the employees represented by them, to settle grievances or claims for compensation without submitting such disputes or grievances to the National Railroad Adjustment Board.

[fol. 63] 11. Uninterrupted services of the River Road's yard foremen and yard helpers are essential to the operation of its railroad. A stoppage of operations would cause this plaintiff thousands of dollars damages daily and would require it to lay off approximately 1100 employees who would lose an aggregate amount of money in excess of Twelve Thousand Dollars ($12,000) wages daily for each day of such strike or stoppage. This plaintiff will be compelled to embargo shipments, including perishable food-

stuffs, into and out of the stock yards in Chicago, which will immediately cause irreparable damage to the 600 industries and 27 railroads served by it. These 27 railroads, which are the other plaintiffs herein, will incur thousands of dollars of damages for each day the strike is in effect. The adverse effects upon business and the public generally will cause hundreds of thousands of dollars damage each day the strike is in effect.

12. The River Road has attempted to settle with defendants the 21 grievances and claims which underlie the threatened strike or work stoppage through negotiation and through the mediation efforts of the National Mediation Board. Defendants refused to submit the grievances to the National Railroad Adjustment Board and refused to join with the carrier in its submission.

13. The amount in controversy exceeds the sum of Three Thousand Dollars ($3,000), exclusive of interest and costs.

Conclusions of Law

Under the foregoing findings of fact, the Court concludes that:

1. The cause of action here asserted by plaintiffs is one arising under the laws of the United States regulating commerce; and the Court has jurisdiction of the parties and subject matter of said cause under 28 U. S. C. 1331 and 1337.

2. The Complaint herewith states a claim upon which relief should be granted.

3. Plaintiffs, defendants and plaintiffs' employees represented by defendants are subject to the Railway Labor Act, the general purposes of which are, among other things, to avoid any interruption to commerce or to the operation of any carrier engaged therein, and to provide [fol. 64] for the prompt and ordinary settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions

Congress has established compulsory administrative machinery under the Railway Labor Act whereby parties to a collective bargaining agreement are required to submit such controversies as are here involved to the National

Railroad Adjustment Board or to a proper court or board without resorting to self-help.

4. It is the public policy of the United States stated in Section 2, First, of the Railway Labor Act, that it shall be the duty of all carriers, their officers, agents and employees, to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes whether arising out of the app-ication of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof. An interruption of commerce or an interruption of the operations of the plaintiffs by strike or stoppage, called, led or participated in by defendants pending final and ultimate decision by the National Railroad Adjustment Board would constitute a violation of said public policy. The purpose of the strike threatened by defendants is to force the River Road, by the use of self-help by defendants and the employees represented by them, to settle grievances or claims for compensation without submitting such grievances or claims to the National Railroad Adjustment Board, all of which is contrary to law.

5. Defendants and each of them by their threatened actions are in violation of the Railway Labor Act. The defendants and each of them have failed to exhaust remedies available to them under the Railway Labor Act for the handling and final disposition of the above claims.

6. This cause does not involve a labor dispute within the meaning of the Norris-La Guardia Act (29 U. S. C. 101 et seq:) and this Court has not been deprived of jurisdiction to grant the relief requested herein.

7. Even if this cause did involve a labor dispute within the meaning of the Norris-La Guardia Act, this Court has jurisdiction to enjoin the threatened acts for the purpose [fol. 65] of enforcing the mandatory provisions of the Railway Labor Act.

8. Plaintiffs have no adequate remedies at law and will suffer irreparable harm and injury unless awarded injunctive relief. The equity powers of this Court are adequate to afford the relief sought herein and should be exercised in these circumstances.

9. A permanent injunction should be issued enjoining defendants, their agents, servants, and all acting by, through, or for them, or on their behalf, from conducting any strike, stoppage, or other active economic coercion to force or coerce the River Road into settling the claims, grievances and disputes herein referred to which have been filed with the National Railroad Adjustment Board.

Enter:

Win G. Knoch, United States District Judge

March 15, 1956.

* * * * * * *

PERMANENT INJUNCTION

This matter coming on to be heard, and the Court having considered the verified Amended Complaint heretofore filed in this case, the defendants' answer and motion to dismiss, plaintiffs' motions with affidavits attached, and the arguments of counsel and the entire record herein, and the Court having made findings of fact and conclusions of law,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that defendants, members of defendants' organization and its officers, their agents, servants, employees and attorneys, and all persons including all yardmen, yard foremen and switchmen employed by the Chicago River and Indiana Railroad Company on its railroad, and any persons in active concert and participation with them, and all persons acting by, with, through and under them, or by or through their order, be and they are hereby enjoined from, in connection with the grievances now pending in the National Railroad Adjustment Board:

1. Calling, ordering, authorizing, encouraging, inducing, approving, continuing, starting or permitting any strike or [fol. 66] collective work stoppage on that plaintiff's railroad.

2. Picketing or bannering any of the premises on which that plaintiff conducts its railroad operations.

3. Interfering with ingress to or egress from said premises.

4. Interfering in any manner with the delivery, loading, unloading, dispatch or movement of any of that plaintiff's rolling stock, engines, cars, equipment or trains or any of the contents thereof.

5. In any manner interfering with or inducing or endeavoring to induce any person employed by that plaintiff from performing his work and duties and from in any manner endeavoring to induce any such employee to desist therefrom.

Nothing herein shall be construed to require an individual employee to render labor or service without his consent, nor shall anything herein be construed to make the quitting of his labor by an individual employee an illegal act.

Enter:

Win G. Knoch, United States District Judge

March 15, 1956.

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IN THE DISTRICT COURT OF THE UNITED STATES

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DESIGNATION OF PARTS OF RECORD TO BE INCLUDED IN TRANSCRIPT FOR TRANSMITTAL TO THE SUPREME COURT OF THE UNITED STATES FOR PETITION FOR CERTIORARI—Filed March 26, 1956.

The Clerk of the Court is requested and directed to prepare a transcript of record in the above-entitled cause for transmittal to the Supreme Court of the United States and to include therein only the following:

[fol. 67] 1. Mandate of the United States Court of Appeals for the Seventh Circuit.

2. Motion for Permanent Injunction.

3. Defendants' Election to Abandon Their Answer and to Stand Only Upon Certain Defenses, etc.

4. District Court's Findings of Fact, Conclusions of Law and Final Judgment and Injunction entered March 15, 1956.

5. Clerk's Certificate.

Note: Defendants intend to consolidate this Record with a transcript of the record of the United States Court of Appeals for the Seventh Circuit in this cause, which transcript will incorporate the full substance of the remainder of the record in this cause.

Henslee, Monek & Murray, 139 North Clark Street, Suite 810, Chicago 2, Illinois, STate 2-5925. Attorneys for the Brotherhood of Railroad and other defendants.

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IN THE DISTRICT COURT OF THE UNITED STATES

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NOTICE OF APPEAL—Filed April 9, 1956

Notice is hereby given that all of the defendants in this cause hereby appeal to the United States Court of Appeals for the 7th Circuit from the final Judgment and Order of Injunction rendered in this cause on March 15, A. D. 1956, the Honorable Win G. Knoch, Judge presiding.

Edward B. Henslee, Martin K. Henslee, William C. Wines, John J. Naughton, 139 North Clark Street, Chicago, Ill., STate 2-5925, Attorneys for Defendants.

[fol. 68] STATE OF ILLINOIS,
County of Cook, ss.

John J. Naughton, being first duly sworn, deposes and says that he has caused a true copy of the above Notice of Appeal to be served upon all of the plaintiffs by mailing such copy in an envelope bearing sufficient postage and addressed to their attorneys of record as follows:

Walter J. Cummings, Jr., Sidley, Austin, Burgess & Smith, 11 S. La Salle Street, 20th Floor, Chicago, Illinois.

John J. Naughton

Subscribed and sworn to before me this 9th day of April, A. D. 1956.

Dorothy Steinmetz, Notary Public. (Seal)

UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

No. 54 C 1024

The Chicago River and Indiana Railroad Company, et al., Plaintiffs,

vs.

Brotherhood of Railroad Trainmen, et al.

CLERK'S CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on the 9th day of April, 1956, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Walter J. Cummings, Jr.,
Sidley, Austin, Burgess and Smith,
11 South La Salle Street, 20th Floor,
Chicago 3, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 9th day of April, 1956.

Roy H. Johnson, Clerk. By Gizella Butcher, Deputy Clerk. (Seal)

* * * * * * *

[fol. 69] IN THE DISTRICT COURT OF THE UNITED STATES

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STATEMENT OF POINTS ON APPEAL—Filed April 9, 1956

The defendants will rely upon appeal on the following contentions:

1. The Court erred in holding that the National Railway Labor Act was intended to prohibit the threatened strike involved in this case.

2. The Court erred in failing to hold that even if the National Railway Labor Act was intended to prohibit the threatened strike involved in this case, it so far repealed the Norris-La Guardia Act as to force this Court to grant an injunction.

3. The Court erred in entering a judgment for the plaintiffs, in granting a permanent injunction and in not dismissing this case upon the merits with prejudice and at defendants' cost.

Edward B. Henslee, Martin K. Henslee, William C. Wines, John J. Naughton, 139 North Clark Street, Chicago, Ill., STate 2-5925, Attorneys for Defendants.

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[fol. 70] IN THE DISTRICT COURT OF THE UNITED STATES

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DEFENDANTS' ADDITIONAL DESIGNATION OF DOCUMENTS TO BE INCLUDED IN THE RECORD

The defendants request and direct the Clerk of this Court to include in the record heretofore requested by the defendants the following additional items:

1. The prior designation of record.
2. The permanent Injunction.
3. Defendants' Notice of Appeal, with the affidavit of counsel attached thereto.
4. Clerk's Certificate of Mailing Notice of Appeal.
5. This additional designation of parts of the record.
6. Statement of points on which the defendants will rely on appeal.

Edward B. Henslee, Martin K. Henslee, William C. Wines, John J. Naughton, 139 North Clark Street, Chicago, Ill., STate 2-5925, Attorneys for Defendants.

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[fol. 71] IN THE DISTRICT COURT OF THE UNITED STATES

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STIPULATION AS TO RECORD ON APPEAL—Filed April 26, 1956

It is hereby stipulated and agreed by and between the parties, by their Counsel of Record, pursuant to Rule 75(f) of the Federal Rules of Civil Procedure, that the papers heretofore designated in defendants' Designations of Record filed respectively on March 26, 1956 and on [fol. 72] April 9, 1956, in the office of the Clerk of this Court, and the record already on file in the United States Court of Appeals for the Seventh Circuit in Cause No. 11474, entitled The Chicago River and Indiana Railroad Company, et al. vs. Brotherhood of Railroad Trainmen, et al. may constitute the record on appeal in this case.

It is Further Stipulated that the plaintiff waives its right to designate any further matters for inclusion in the Transcript of Record on defendants' appeal in this case and the Clerk may forthwith prepare and transmit the same.

Edward B. Henslee, Martin K. Henslee, William C. Wines, John J. Naughton, Attorneys for Plaintiff.
Marvin A. Jersild, Wayne M. Hoffman, Walter J. Cummings, Jr., William K. Bachelder, Attorneys for Defendants.

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designations of Contents of Record on Appeal, and the Stipulation As To Record on Appeal, filed in this Court in the cause entitled: The Chicago River And Indiana Railroad Company, a corporation, Plaintiff vs. Brotherhood of Railroad Trainmen, a Voluntary Association, et al., Defendants, No. 54 C 1024, as the same appear

from the original records and files thereof now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 27th day of April, 1956.

Roy H. Johnson, Clerk, By Gizella Butcher, Deputy Clerk. (Seal)

[fol. 73] UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 11745

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

BROTHERHOOD OF RAILROAD TRAINMEN, et al., Defendants-Appellants,

vs.

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, et al., Plaintiffs-Appellees

JUDGMENT—May 17, 1956

Upon the motion of defendants-appellants that this cause be docketed upon the transcript of record heretofore filed and printed in the above-mentioned cause No. 11474 and upon the additional transcript of record filed in this cause No. 11745, and that it may be considered and decided upon briefs, oral arguments, petition for rehearing and answer to petition for rehearing filed in cause No. 11474, which motion is supported by stipulation signed by both defendants-appellants and plaintiffs-appellees, and it appearing that, following our reversal in cause No. 11474 of the district court's order dismissing the above entitled suit and for remandment, said district court proceeded upon re-

mandment and rendered findings of fact, conclusions of law, and a judgment for injunction in accordance with the views expressed in this court's opinion in No. 11474, and that defendants-appellants have saved but two of the questions originally raised by the proceedings below, waiving all other questions of fact or law, to wit:

> "(1) Was it the Congressional intent of the National Railway Labor Act to prohibit the threatened strike involved in this case which concededly, if accomplished, would have involved only demands with respect to minor grievances?'
>
> [fol. 74] (2) If the National Railway Labor Act was intended to prohibit the above-mentioned threatened strike, did it so far repeal the Norris-LaGuardia Act as to authorize or compel the District Court to grant an injunction?"

And it further appearing that all of the parties hereto represent to this court that they have no arguments to present other than those presented in No. 11474, but that defendants-appellants ask this court to reconsider and rescind its former holding, and the court being fully advised on the premises, It Is Ordered, Adjudged and Decreed that this court refuses to reconsider and rescind its former holding in No. 11474, and hereby adheres to said holding. The court finds that the district court, upon remandment, proceeded in accordance with the order of remandment, and that no error occurred in the poceedings below upon remandment.

Accordingly, it is ordered, adjudged and decreed that the judgment of the district court, of March 15, 1956, from which this appeal was taken, be and the same is hereby, affirmed.

It is further ordered that pursuant to the stipulation of the parties hereto, there shall be filed in this appeal No. 11745, in addition to transcript of record now on file therein, the transcript of record heretofore filed in case No. 11474.

* * * * * * *

[fol. 75] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN, etc., et al.,
Petitioners,

vs.

CHICAGO RIVER AND INDIANA RAILROAD COMPANY, et al.

ORDER ALLOWING CERTIORARI—Filed October 15, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary calendar and is assigned for argument immediately following No. 84.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2705-2)